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ECONOMIC AND ENVIRONMENTAL QUESTIONS: FOLLOW-UP TO GENERAL ASSEMBLY RESOLUTION 50/106: BUSINESS AND DEVELOPMENT

Argentina, United States of America and Venezuela: draft resolution

Corruption and bribery in transnational commercial activities

The Economic and Social Council

Recommends to the General Assembly the adoption of the following draft resolution:

"United Nations declaration on corruption and bribery in transnational commercial activities

"The General Assembly,

"Recalling its resolution 3514 (XXX) of 15 December 1975, in which, inter alia, it condemned all corrupt practices, including bribery, in international business transactions, reaffirmed the right of any State to adopt legislation and to investigate and take appropriate legal action, in accordance with its national laws and regulations, with respect to such corrupt practices, and called upon all Governments to cooperate to prevent corrupt practices, including bribery,

"Recalling also its resolution 50/106 of 20 December 1995, in which it recommended that the Economic and Social Council, at its substantive session of 1996, consider the draft international agreement on illicit payments and report to the Assembly at its fifty-first session,

"Convinced that a stable and predictable environment for international business transactions is essential for the mobilization of investment, finance, technology, skills and other important resources across national borders to promote economic and social development worldwide, especially that of countries seeking to revitalize or develop their economies,

"Recognizing that the prevention and avoidance of corrupt practices are important elements in an improved international business environment, that they enhance fairness and competitiveness in transnational business transactions, and that they also benefit the general public,

"Recognizing that efforts to combat bribery are an essential part of the promotion of good governance and of economic development,

"Taking into account efforts by the international community to address other international criminal activities and corrupt practices, such as trafficking in illegal narcotics, money-laundering and smuggling in order to enable people in all countries to lead their lives and conduct business in greater peace, safety and security,

"Recalling the work done by the United Nations in the preparation of a draft agreement on illicit payments, which helped call attention to and raise international awareness of the adverse consequences of bribery in connection with international commercial transactions,

"Taking note of and welcoming more recent developments that have further advanced international understanding and cooperation regarding bribery in transactional business, including:

(a) The agreement in March 1996 by member countries of the Organization of American States on an InterAmerican Convention Against Corruption, including an article on the prohibition of foreign commercial bribery;

(b) The ongoing work in the World Trade Organization to improve transparency, openness and due process in government procurement procedures;

(c) The agreement by the member countries of the Organisation for Economic Cooperation and Development to review and prohibit the tax deductibility of bribes paid to foreign officials in international commercial transactions;

(d) The commitment of ministers of member countries of the Organisation for Economic Cooperation and Development to criminalize the bribery of foreign public officials in international business transactions,

"1. Commends the work being undertaken in other United Nations and international forums to address the problem of corruption in transnational commercial activities, and urges all States concerned to pursue the early completion of such work;

"2. Approves the United Nations Declaration on Corruption and Bribery in Transnational Commercial Activities, which is contained in the annex to the present resolution;

"3. Urges Member States, in accordance with the provisions of the Declaration, to take all appropriate measures at the national, regional and international levels to combat corruption in transnational commercial activities, in particular bribery;

"4. Invites the Secretary-General to inform Member States and the relevant specialized agencies and organizations of the United Nations system of the adoption of the present resolution, to encourage action towards making its provisions widely known and to promote its full implementation;

"5. Requests the Secretary-General to prepare a report on steps taken by Member States and progress made towards implementation of the provisions of the present resolution, and to report to the General Assembly at its fifty-second session;

"6. Decides to include on the agenda of the fifty-second session of the General Assembly a review of the Secretary-General's report concerning the implementation of the present resolution, as well as a review of the InterAmerican Convention Against Corruption and other similar actions by international and regional organizations, with a view to considering possible future United Nations action in this area.

"Annex

"UNITED NATIONS DECLARATION ON CORRUPTION AND BRIBERY IN TRANSNATIONAL COMMERCIAL ACTIVITIES

"The General Assembly solemnly proclaims the United Nations Declaration on Corruption and Bribery in Transnational Commercial Activities set out below.

"Member States, acting individually and through international and regional organizations, commit themselves to pursue the following courses of action to further the objectives of the present Declaration:

"Article 1

"Take immediate and concrete action to combat foreign commercial bribery, including effective enforcement of existing laws prohibiting the bribing of Member States' own public officials in transnational commercial transactions;

"Article 2

"Make punishable by appropriate criminal penalties, and subject to their own principles of jurisdiction:

(a) The offer, promise or giving of any payment, gift or other advantage, directly or indirectly, to a foreign public official as undue consideration for performing or refraining from the performance of his duties in connection with an international commercial transaction;

(b) The soliciting, demanding, accepting or receiving, directly or indirectly, by a foreign public official of any payment, gift or other advantage, as undue consideration for performing or refraining from the performance of his duties in connection with international commercial transactions;

"Article 3

"Prohibit the tax deductibility of bribes paid to foreign public officials;

"Article 4

"Develop accounting standards and practices that will improve the transparency of international business transactions and encourage the development of business codes of conduct that prohibit the use of bribery for commercial purposes;

"Article 5

"Develop government procurement procedures intended to improve transparency and help prevent the incidence of commercial bribery;

"Article 6

"Ensure that corporations and other juridical persons established within their territories maintain, under penalty of law, accurate records of payments made by them to an intermediary, or received by them as an intermediary, in connection with transnational commercial activities;

"Article 7

"Cooperate and afford one another the greatest possible assistance in connection with criminal investigations and procedures brought in respect of corruption and bribery in transnational commercial activities. Mutual assistance shall include, as far as permitted under national laws of the

affected countries and taking into account the need for confidentiality, as appropriate:

(a) Production of documents and other information, taking of evidence and service of documents relevant to investigations or court proceedings;

(b) Notice of the initiation and outcome of any criminal proceedings concerning bribery in transnational commercial activities to other States that may have jurisdiction over the same offense;

(c) Extradition proceedings, where applicable, in accordance with existing bilateral treaties;

"Article 8

"Cooperate with and provide to the Secretary-General of the United Nations relevant information in connection with the Secretary-General's preparation of a report to Member States on progress made in implementing the provisions of the present Declaration."